

**HONORABLE GONZALO P. CURIEL
UNITED STATES DISTRICT JUDGE
CIVIL PRETRIAL & TRIAL PROCEDURES**

Criminal matters contact:

Courtroom Deputy A. Sacco: (619) 557-5539

Civil matters contact:

Judge Curiel's Law Clerks in chambers: (619) 557-7667

Transcript requests contact:

Court Reporter: Chari Bowery (858) 822-8828

Location: Schwartz Courthouse - Courtroom 2D

These rules will help civil litigants appearing before Judge Curiel. Unless otherwise ordered by the Court, counsel and pro se litigants are expected to follow the Federal Rules of Civil Procedure, the Local Rules for the Southern District of California, the Electronic Case Filing Administrative Policies and Procedures Manual, and any other applicable rules. The Local Rules and the Electronic Case Filing Administrative Policies and Procedures Manual are available on the Court's website: <http://www.casd.uscourts.gov>.

COMMUNICATION WITH CHAMBERS

Telephone calls to chambers are permitted only for scheduling or calendaring motion hearings or as otherwise authorized by the Court. Court personnel are prohibited from interpreting orders, discussing the merits of a case, or giving legal advice, including advice on procedural matters. Letters, faxes, and emails are prohibited unless otherwise authorized by the Court.

DISCOVERY

Counsel shall contact the magistrate judge's chambers directly for all matters pertaining to discovery. Any objection to a discovery ruling of the magistrate judge must be filed as a motion pursuant to Civil Local Rule 7.1.

PROPOSED ORDERS

Proposed orders shall be submitted in Word format simultaneously with all motions, except motions that are fully noticed and set for hearing at least 28 days beyond the date of filing. In accordance with Section 2(h) of the Electronic Case Filing Administrative Policies and Procedures Manual, proposed orders shall not contain the name and law firm information of the filing party and shall not contain the word “proposed” in the caption. Counsel shall email proposed orders to opposing counsel and to the following email address: efile_curiel@casd.uscourts.gov, and include the docket number and case name in the subject line of the email.

JOINT MOTIONS/STIPULATIONS

Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, all stipulations must be filed as joint motions. Joint motions must be signed by the Court to have legal effect.

EX PARTE MOTIONS

The Court may rule upon *ex parte* motions without requiring a response from the opposing party. If a party intends to oppose the *ex parte* motion, the party must immediately file a notice stating that the party intends to oppose the *ex parte* motion and providing the date upon which the opposition will be filed.

PRETRIAL MOTION PRACTICE

HEARING DATES

Motion hearing dates are generally set on **Fridays at 1:30 p.m.**

Pursuant to Civil Local Rule 7.1(b), all dates for motion hearings must be obtained by calling the law clerk before filing any motion. Motion papers **MUST** be filed and served *the same day* of obtaining a motion hearing date from chambers. A briefing schedule will be issued once a motion has been filed. The parties must obtain leave of Court by filing an *ex parte* request before filing any sur-replies.

The Court strongly encourages litigants to be mindful of opportunities for young lawyers to conduct hearings before the Court, particularly for motions where the young lawyer drafted or contributed significantly to the underlying motion or

response. Frequently, the Court will issue a written order and vacate the hearing unless oral argument appears to be necessary. If a written request for oral argument is made in the moving, opposition or reply briefs stating that an attorney with less than five years of experience after becoming a member of the California bar will argue the oral argument, then such a representation will weigh in favor of holding a hearing.

FAILURE TO OPPOSE

An opposing party's failure to file an opposition to any motion may be construed as consent to the granting of the motion pursuant to Civil Local Rule 7.1(f)(3)(c).

MOTIONS FOR SUMMARY JUDGMENT

All motions for summary judgment shall be accompanied by a separate statement setting forth **plainly and concisely** all material facts that the moving party contends are undisputed. Each of the material fact shall be followed by a reference to the supporting evidence. The parties should avoid using the separate statements as a means of presenting or repeating legal arguments that are or should be made in the memorandum of points and authorities in support of the motion for summary judgment. Separate statements assist the Court in identification of the material facts as well as pinpointing the evidence that proves those facts. The failure to comply with this requirement of a separate statement may in the court's discretion constitute a sufficient ground for denying the motion.

Any opposition to a summary judgment motion shall include a response to the separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating if the opposing party agrees or disagrees that those facts are undisputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. The statement shall also set forth any additional material facts that are pertinent to the disposition of the motion. The parties should avoid using the separate statements as a means of presenting or repeating legal arguments that are or should be made in the memorandum of points and authorities in opposition to the motion for summary judgment. Failure to comply with this requirement of a separate statement may in the court's discretion constitute a sufficient ground for granting the motion.

The separate statement must be in a two-column format with the moving party providing in numerical sequence the undisputed material facts in the first column followed by the evidence citation that establishes those undisputed facts. In opposition, the opposing party shall indicate in the second column whether the fact is “disputed” or “undisputed.” If disputed, the opposing party must state in the second column, directly opposite the fact in dispute, the reasons for the dispute and cite the evidence that supports the position that the fact is controverted.

Absent leave of court, separate statements shall be limited to 15 pages and must comply with the font requirements of Civil Local Rule 5.1.

COURTESY COPIES

Courtesy copies of filings that exceed 20 pages in length, including attachments and exhibits, shall be submitted in accordance with Section 2(e) of the Electronic Case Filing Administrative Policies and Procedures via United States Postal Service mail, courier, or delivery to the Clerk’s Office. The courtesy copy shall contain the CM/ECF document header on the top of each page. The Court prefers courtesy copies to be printed double-sided, but will accept single-sided. If a filing has more than three (3) exhibits, the exhibits must be tabbed.

SEEKING LEAVE TO FILE DOCUMENTS UNDER SEAL

There is a presumptive right of public access to court records based upon common law and first amendment grounds.¹ Even where a public right of access exists, such access may be denied by the court in order to protect sensitive personal or confidential information.² The Court may seal documents to protect sensitive information, however, the documents to be filed under seal will be limited by the

1 See *Nixon v. Warner Commc’n, Inc.*, 435 U.S. 589, 597 (1978); *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1212 (9th Cir. 2002).

2 Although courts may be more likely to order the protection of the information listed in Rule 26(c) of the Federal Rules of Civil Procedure, courts have consistently prevented disclosure of many types of information, such as letters protected under attorney-client privilege which revealed the weaknesses in a party’s position and was inadvertently sent to the opposing side, see *KL Group v. Case, Kay, and Lynch*, 829 F.2d 909, 917-19 (9th Cir. 1987); medical and psychiatric records confidential under state law, see *Pearson v. Miller*, 211 F.3d 57, 62-64 (3d Cir. 2000); and federal and grand jury secrecy provisions, see *Krause v. Rhodes*, 671 F.2d 212, 216 (6th Cir. 1982). Most significantly, courts have granted protective orders to protect confidential settlement agreements. See *Hasbrouck v. BankAmerica Housing Serv.*, 187 F.R.D. 453, 455 (N.D.N.Y. 1999); *Kalinauskas v. Wong*, 151 F.R.D. 363, 365-67 (D. Nev. 1993).

Court to only those documents, or portions thereof, necessary to protect such sensitive information.

Parties seeking a sealing order must provide the Court with: 1) a specific description of particular documents or categories of documents they need to protect; and 2) affidavits showing good cause to protect those documents from disclosure. Where good cause is shown for a protective order, the court must balance the potential harm to the moving party's interests against the public's right to access the court files. Any protective order must be narrowly drawn to reflect that balance. Any member of the public may challenge the sealing of any particular document. *See Citizens First Nat'l Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 944-45 (7th Cir. 1999).

PRETRIAL CONFERENCE

Pursuant to Civil Local Rule 16.1(f)(6), the Court requires that the parties email to Chambers a proposed pretrial order in Word format at least seven (7) days before the pretrial conference. The proposed pretrial order must include all elements set out in Civil Local Rule 16.1(f)(6)(c) and any other issues relevant to the trial. The requirement to file a Memoranda of Contentions of Law and Fact, pursuant to Civil Local Rule 16.1(f)(2)(a), is waived. All parties are required to cooperate in completing the proposed pretrial order.

The Court will set a trial date and a motion in limine hearing date during the pretrial conference. Unless the Court orders otherwise, all motions in limine are due two weeks before the motion in limine hearing date. All responses are due seven (7) days before the motion in limine hearing date. The joint proposed jury instructions, trial briefs, proposed verdict form, *voir dire* questions, statement of the case, and exhibit binders are to be placed in a trial notebook, and are due seven (7) days before the motion in limine hearing date unless the Court orders otherwise. The proposed jury instructions, proposed verdict form, and statement of the case shall also be emailed to the Court in Word format.

TRIAL PRACTICE

ELECTRONIC EQUIPMENT FOR THE COURTROOM

The Court now has new audio/visual equipment for counsels' use. The courtroom has individual monitors at counsels' tables, the lectern, the witness box, and the jury box as well as a large 55" gallery monitor for public viewing. A document camera and a DVD/Blue Ray player are now available for use and can be connected to counsels' computers, laptops and tablets. HDMI and VGA video inputs are available at the lectern, witness box and counsels' tables.

Counsel are required to bring their own computers, laptops, tablets, HDMI or VGA adapters and wireless cards, if necessary. Counsel should contact the CRD for details and instructions and with questions regarding the use of equipment not provided for by the Court.

JURY SELECTION

The courtroom deputy will provide counsel with a list of the jury panel in random order before *voir dire*.

The courtroom deputy will seat all prospective jurors (20 prospective jurors will generally be summoned for civil cases). Unless authorized by the Court, parties should not submit jury questionnaires. The Court will conduct the initial jury *voir dire*. Counsel may propose questions to be posed to jurors during the court conducted *voir dire*. In appropriate cases, the Court may permit follow-up *voir dire* by the attorneys.

After *voir dire* of the entire panel has been completed, counsel may make any challenges for cause at side bar. If a challenge for cause is sustained, the excluded panelist shall remain in his or her seat for the time being.

Counsel will exercise peremptory challenges using the "Double Blind Method," whereby the parties simultaneously exercise their challenges.

After each side has exercised its peremptory challenges, depending on the estimated length of the trial, the first seven to nine persons not challenged

peremptorily or successfully challenged for cause shall constitute the jury. All remaining prospective jurors will be excused at that time.

TRIAL PROCEDURES

Trial generally proceeds from 9:00 a.m. to 5:00 p.m., Tuesday through Friday, unless the Court schedules otherwise. Jury deliberations generally proceed from 9:00 a.m. to 5:00 p.m., unless the Court schedules otherwise.

In civil trials, it is the practice of the Court to set a reasonable time limit for the entire trial. The time limit set by the Court includes opening statements, arguments, testimony, closing arguments, and any other matters that occur over the course of the trial, excluding jury selection. The Court will keep track of time limits and, upon request, the courtroom deputy will inform the parties of the time spent and remaining for trial. The time limit is subject to exception for good cause shown.

Lawyers must make every effort to have their witnesses available on the day they are to testify. The Court attempts to accommodate witnesses' schedules and may permit counsel to call them out of sequence if warranted. Counsel must anticipate any such possibility and discuss it with opposing counsel and the Court. Counsel must promptly alert the Court to any scheduling problems involving witnesses.

Do not enter the well, except during *voir dire*, opening statements, and closing argument. Conduct all examination of witnesses from the podium. Seek permission from the Court before approaching a witness. Keep your visit to the witness stand brief, e.g., by quickly orienting the witness with an exhibit and returning to the podium. When objecting state only the legal ground for the objection, e.g., "objection, hearsay." Speaking objections are not permitted, unless the Court requests further information from counsel. When a party has more than one lawyer, only one lawyer may conduct the examination of a given witness and that lawyer alone may make objections concerning that witness.

BENCH TRIAL

Seven (7) days before trial, counsel will submit proposed Findings of Fact and Conclusions of Law by hard copy and an electronic copy of the proposed Findings of Fact and Conclusions of Law shall be emailed in Word format to efile_curiel@casd.uscourts.gov.

SETTLEMENT

A. NON-CLASS ACTION SETTLEMENTS

If the parties settle a case, counsel shall file a “Notice of Settlement” and immediately inform the magistrate judge of the settlement. If the magistrate judge does not set a deadline for the filing of a “Joint Motion to Dismiss,” the parties shall file the “Joint Motion to Dismiss” and email a proposed order to this Court within twenty-eight (28) days of the settlement.

B. CLASS ACTION SETTLEMENTS

1. PRELIMINARY APPROVAL

Proposed orders for preliminary approval of class certification and/or preliminary settlement approval must be supported by an affidavit and memorandum of points and authorities establishing that all Rule 23 statutory requirements have been satisfied, including the class certification factors and fairness factors, and should include information about the following:

INFORMATION ABOUT THE SETTLEMENT

- a. If a litigation class has not been certified, any differences between the settlement class and the class proposed in the operative complaint and an explanation as to why the differences are appropriate in the instant case as well as any differences between the claims to be released and the claims in the operative complaint and an explanation as to why the differences are appropriate in the instant case.
- b. If a litigation class has been certified, any differences between the settlement class and the class certified and an explanation as to why the differences are appropriate in the instant case as well as any differences between the claims to be released and the claims certified for class

treatment and an explanation as to why the differences are appropriate in the instant case.

- c. The anticipated class recovery under the settlement, the potential class recovery if plaintiffs had fully prevailed on each of their claims, and an explanation of the factors bearing on the amount of the compromise.
- d. The proposed allocation plan for the settlement fund.
- e. If there is a claim form, an estimate of the number and/or percentage of class members who are expected to submit a claim in light of the experience of the selected claims administrator and/or counsel from other recent settlements of similar cases, the identity of the examples used for the estimate, and the reason for the selection of those examples.
- f. In light of Ninth Circuit case law disfavoring reversions, whether and under what circumstances money originally designated for class recovery will revert to any defendant, the potential amount or range of amounts of any such reversion, and an explanation as to why a reversion is appropriate in the instant case.

SETTLEMENT ADMINISTRATION—The parties should identify the proposed settlement administrator, the settlement administrator selection process, how many settlement administrators submitted proposals, what methods of notice and claims payment were proposed, and the lead class counsel’s firms’ history of engagements with the settlement administrator over the last two years. The parties should also address the anticipated administrative costs, the reasonableness of those costs in relation to the value of the settlement, and who will pay the costs. The court may not approve the amount of the cost award to the settlement administrator until the final approval hearing.

NOTICE—The parties should ensure that the class notice is easily understandable, taking into account any special concerns about the education level or language needs of the class members. The notice should include the following information: (1) contact information for class counsel to answer questions; (2) the address for a website, maintained by the claims administrator or class counsel, that has links to the notice, motions for approval and for attorneys’ fees and any other important documents in the case; (3) instructions on how to access the case docket via PACER or in person at any of the court’s locations. The notice should state the

date of the final approval hearing and clearly state that the date may change without further notice to the class. Class members should be advised to check the settlement website or the Court's PACER site to confirm that the date has not been changed. The notice distribution plan should be an effective one.

Class counsel should consider the following ways to increase notice to class members: identification of potential class members through third-party data sources; use of social media to provide notice to class members; hiring a marketing specialist; providing a settlement website that estimates claim amounts for each specific class member and updating the website periodically to provide accurate claim amounts based on the number of participating class members; and distributions to class members via direct deposit.

The notice distribution plan should rely on U.S. mail, email, and/or social media as appropriate to achieve the best notice that is practicable under the circumstances, consistent with Federal Rule of Civil Procedure 23(c)(2). If U.S. mail is part of the notice distribution plan, the notice envelope should be designed to enhance the chance that it will be opened.

ATTORNEYS' FEES—The court will not approve a request for attorneys' fees until the final approval hearing, but class counsel should include information about the fees they intend to request and their lodestar calculation in the motion for preliminary approval. In a common fund case, the parties should include information about the relationship among the amount of the award, the amount of the common fund, and counsel's lodestar calculation. To the extent counsel base their fee request on having obtained injunctive relief and/or other non-monetary relief for the class, counsel should discuss the benefit conferred on the class. Counsel's lodestar calculation should include the total number of hours billed to date and the requested multiplier, if any. Additionally, counsel should state whether and in what amounts they seek payment of costs and expenses, including expert fees, in addition to attorneys' fees.

INCENTIVE AWARDS—The court will not approve a request for incentive awards until the final approval hearing, but the parties should include information about the incentive awards they intend to request as well as the evidence supporting

the awards in the motion for preliminary approval. The parties should ensure that neither the size nor any conditions placed on the incentive awards undermine the adequacy of the named plaintiffs or class representatives. In general, unused funds allocated to incentive awards should be distributed to the class pro rata or awarded to cy pres recipients.

CY PRES AWARDS—If the settlement contemplates a cy pres award, the parties should identify their chosen cy pres recipients, if any, and how those recipients are related to the subject matter of the lawsuit and the class members. The parties should also identify any relationship they or their counsel have with the proposed cy pres recipients. In general, unused funds allocated to attorneys’ fees, incentive awards, settlement administration fees and payments to class members should be distributed to the class pro rata or awarded to cy pres recipients.

2. FINAL APPROVAL

CLASS MEMBERS’ RESPONSE—The motion for final approval briefing should include information about the number of undeliverable class notices and claim packets, the number of class members who submitted valid claims, the number of class members who elected to opt out of the class, and the number of class members who objected to or commented on the settlement. In addition, the motion for final approval should respond to any objections.

ATTORNEYS’ FEES—All requests for approval of attorneys’ fees must include detailed lodestar information, even if the requested amount is based on a percentage of the settlement fund. Declarations of class counsel as to the number of hours spent on various categories of activities related to the action by each biller, together with hourly billing rate information may be sufficient, provided that the declarations are adequately detailed. Counsel should be prepared to submit copies of billing records themselves at the court’s order.

INCENTIVE AWARDS—All requests for incentive awards must be supported by evidence of the proposed awardees’ involvement in the case and other justifications for the awards.

3. POST-DISTRIBUTION ACCOUNTING

Within 21 days after the distribution of the settlement funds and payment of attorneys' fees, the parties should file a Post-Distribution Accounting, which provides the following information:

The total settlement fund, the total number of class members, the total number of class members to whom notice was sent and not returned as undeliverable, the number and percentage of claim forms submitted, the number and percentage of opt-outs, the number and percentage of objections, the average and median recovery per claimant, the largest and smallest amounts paid to class members, the method(s) of notice and the method(s) of payment to class members, the number and value of checks not cashed, the amounts distributed to each cy pres recipient, the administrative costs, the attorneys' fees and costs, the attorneys' fees in terms of percentage of the settlement fund, and the multiplier, if any.

In addition to the above information, where class members are entitled to non-monetary relief, such as discount coupons, debit cards, or similar instruments, the number of class members availing themselves of such relief and the aggregate value redeemed by the class members and/or by any assignees or transferees of the class members' interests. Where injunctive and/or other non-monetary relief has been obtained, discuss the benefit conferred on the class.

Within 21 days after the distribution of the settlement funds and award of attorneys' fees, the parties should post the Post-Distribution Accounting, including the easy-to-read chart, on the settlement website.

The Court may hold a hearing following submission of the parties' Post-Distribution Accounting.